**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION No.26734 of 2006**

26th December, 2006.

Between:

B.S.N. Joshi & Sons Limited, Joshi Chambers,
P.B.No.2045, G.K. towers, 3rd Floor, Dwarakanagar,
Visakhapatnam – 18, represented by its
Branch Manager at Hyderabad Mr. K.A. Swamy. …
Petitioner.

And

The Executive Director (M.M.) Materials Management
Department (Purchase Wing), Block-A, Administrative
Building, Rashtriya Ispat Nigam Limited,
Visakhapatnam Steel Plant, Visakhanatnam and others. ..
Respondents.

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**ORAL ORDER:**

The 1st respondent herein issued open tender notification dated 27.9.2006 inviting tenders for appointment of agents for participation in joint sampling analysis, loading supervision jobs of boiler coal supplies from M/s Mahanadi Coal Fields Ltd., to Visakhapatnam Steel Plant. Pursuant to the same, the petitioner had submitted its tender on 26.10.2006 within the time prescribed. It is not in dispute that as per the schedule notified, the pre-qualification bids were opened on 27.10.2006. However, the petitioner was found to be not qualified on the ground that it failed to satisfy Clause 2(c) of the tender notification, which reads as under:

"Experience in joint sampling and analysis of coal for a minimum period of one year during the last ten years ending March 2006 to

any PSU/Power House of Government Department Certificate from the client(s) regarding joint sampling and analysis must be submitted"

Aggrieved by the said action, this writ petition is filed contending *inter alia,* that Clause 2(c) of the tender notification is highly unreasonable, arbitrary, illegal and the same has been incorporated by the 1st respondent to accommodate the existing contractor. It is pleaded that the petitioner is engaged in the work of coal trading, coal handling etc., for more than five decades and that the petitioner has got good experience in the field of monitoring and supervising the quality and quantity of the coal and the coal handling of the petitioner is 9.98 million tons per annum for the last five years. However, the petitioner could not satisfy the conditions under Clause 2(c) of the impugned tender notification under which the experience in joint sampling and analysis of coal is required for a minimum period of one year during the last ten years **ending with March, 2006.** It is contended that there is absolutely no justifiable reason to restrict the experience only up to March, 2006, whereas the tender notification was published in the month of October, 2006. Alleging that the said restriction has illegally deprived the petitioner of its right to participate in the tender, this writ petition is filed.

I have heard the learned counsel for both the parties in detail and perused the material on record.

Learned counsel for the petitioner vehemently contended that the impugned condition has no nexus to the object sought to be achieved and at any rate since the petitioner had substantially satisfied the eligibility prescribed, there is absolutely no reason to disqualify the petitioner. In support of his contention, the learned counsel for the petitioner has placed reliance upon the decisions in **D.S. Nakara and others v. Union of India**[1] and **Noble Resources Ltd., v. State of Orissa and another**[2]**.**

There can be absolutely no dispute about the ratio laid down in

the above decisions. However, the law is well settled that the tender inviting authority can choose their own terms, including the qualification and experience in respect of the work for which tenders are invited. When the specifications so prescribed do not suffer from the *vice* of arbitrariness or unreasonableness, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India will not sit in appeal and substitute its own opinion. In the case on hand, on the basis of the averments made in the affidavit filed in support of the writ petition it cannot be said that by virtue of Clause 2(c), the petitioner was deliberately eliminated from participating in the tender process. As a matter of fact, there is no allegation of any *mala fides.*

It is also relevant to note that the writ petitioner is admittedly, a disqualified tenderer, who could not satisfy the eligibility criteria. No relief under Article 226 of the Constitution of India can be granted at the instance of such party, who has participated in the tender process without raising any objection and subsequently found to be ineligible.

The learned counsel appearing for the 1st respondent, under instructions, stated that as a matter of fact, the price bids of the qualified tenderers were also opened on 6.12.2006 and the letter of acceptance was already issued to the successful bidder on 19.12.2006.

Having regard to the settled principles of law and particularly in view of the fact that the letter of acceptance has already been issued to the successful bidder, the interference by this Court is not at all warranted.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

26.12.2006.

mrr/kgr

[1] AIR 1983 SC 130;

[2] 2006 (9) SCALE 181.